IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Bail Appl..No. 5262 of 2007()

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LP.69/2005 of J.M.F.C.-I, PUNALUR
CR.NO.351/2001 OF ANCHAL POLICE STATION

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PETITIONER: ACCUSED;

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JAMES, S/O.MATHAI, MOOZHIKKACHALIL HOUSE
PIRALI P.O., MANJALLOOR, MUVATTUPUZHA,
ERNAKULAM DISTICT.

BY ADV. SRI.A.C.DEVY

RESPONDENT: STATE:

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STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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B.A.No.5262 of 2007

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Dated this the 7th day of September 2007

**O R D E R**

Application for anticipatory bail. The petitioner faces indictment inter alia under Section 379 I.P.C in a pending case. Consequent to his non-appearance warrant of arrest has been issued against him. The case has now been transferred to the list of long pending cases. The petitioner submits that he is innocent. His absence was not wilful. The petitioner now wants to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 438 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

2. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the

extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate.

3. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

4. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself .

**(R.BASANT, JUDGE)**

jsr

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007